

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,613

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a thirty-year-old man who is presently attending college on a full-time basis. In 1985 he suffered a back injury while working on a construction job. It appears that he has received regular chiropractic treatment since that time.

The petitioner continued working until August, 1992. He states that following his injury he was forced to take progressively lighter jobs. He states that he was unable to continue his last job, as a clerk in a health food store, due to increasing problems with his back.

In October, 1992, the petitioner was seen by an orthopedist, who noted the petitioner's complaints, but was unable to make any diagnosis.

In April, 1993, the petitioner's treating chiropractor referred him to another chiropractor for further assessment. The report of this examination noted that the petitioner was attending college and was sitting "quite a bit of the time". The report concludes with the following "Discussion/Recommendation":

It is my opinion this patient is not yet at maximum medical improvement, as he has not reached a level of symptom control that he once enjoyed. Therefore, I recommend that he continue with [chiropractor], his swimming, physical therapy with myofascial release until he reaches this 75% level once again. He does have orthotics but they are somewhat old and I think they should be updated. I have recommended Full length Power Soles with BL pronation wedges. He should wear these 100% of the time. I have also recommended he use a cervical supine support which I think will help him while sleeping. We talked about BL postural equality and its relation to his back, neck and extremities.

I do believe the major effect in this man's life should be finding the right employment niche. He does feel that he will be able to handle a career in theater lighting and I would strongly encourage him to follow through with this. He is presently in college pursuing this line of work. The activities would be varied and he would have some control over this type of work. He states he does best under these kinds of conditions. He is trying to put his life back together now after "eight years of uncertainty". I feel he is headed in the right direction. His present care seems appropriate and hopefully he will get back up to the 75% level. Once he reaches that point, I would be more than happy to re-evaluate him for consideration of permanency rating.

A consultative examination of the petitioner in September, 1994, found that the petitioner suffered from TMJ, headaches, and neck and upper rib pain. Although the examiner felt the petitioner "deserves medicaid for six months to a year so that his TMJ can be treated", he noted that the petitioner could perhaps do some sedentary jobs that did not require lifting.

At his hearing, held on November 7, 1994, the petitioner testified that his back pain is aggravated by lifting, standing, and any flexion. He states that when he sits for more than a few minutes his feet start to go numb and his head and neck hurt.

The petitioner admitted, however, that since the Spring semester of 1993, he has been enrolled in college full-time (16 credits per semester) studying theater lighting. He states, however, that his instructors are flexible and accommodating of his physical problems.

The above-cited medical evidence is problematic, at best, as to whether the petitioner has been unable to engage in all work activity since August, 1992, when he last was employed. The fact that he has been able to attend college full-time since early 1993 certainly does not weigh in his favor in this regard.

Of particular concern to the hearing officer, however, is the lack of any opinion from the chiropractor who has been treating the petitioner for the last year and a half. This hearing was continued almost two years at the petitioner's request so that he could obtain further medical evidence. At all times the petitioner has been represented by legal counsel. At the close of the testimony, the hearing officer again continued the matter to allow the petitioner another chance to try to obtain such a statement, but none was forthcoming.

In the inexplicable absence of any narrative report from the petitioner's treating chiropractor, and based on the petitioner's demeanor at the hearing, the hearing officer is unable to credit the petitioner's allegations that he cannot engage in any substantial gainful sedentary work activity even though he is able to attend college on a full-time basis. A reasonable reading of the medical evidence that is in the record (see supra) is that the petitioner has not been precluded from performing sedentary work for any requisite twelve month period.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

In this case the weight of the medical evidence indicates that the petitioner, a full-time college student, has not been precluded from performing sedentary work for any consecutive twelve-month period. Considering the lack of medical evidence in support of the petitioner's allegations that he cannot perform sedentary work, and the lack of credibility of the petitioner's own testimony in this regard, the Department's decision is affirmed.⁽¹⁾ See 20 C.F.R. § 404, Subpart P., Appendix II, Rule 201.27.

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1. If the petitioner can obtain a statement from a treating medical source that he cannot perform sedentary work he should, of course, reapply for benefits.